

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

168TH AND DODGE and RED
DEVELOPMENT OF WEST DODGE,

Plaintiffs,

v.

RAVE REVIEWS CINEMAS,

Defendant.

8:03CV171

ORDER

This matter is before the court on plaintiffs' motion for reconsideration or, in the alternative, to alter or amend the judgment. Filing No. 426. The court denies the motion for reconsideration for the following reasons:

1. In large part, the plaintiffs rehash those arguments previously presented and decided by this court. The court finds no reason to reconsider those arguments.

2. Plaintiffs rely in large measure on Judge Thomas Shanahan's opinion issued at the motion to dismiss stage. As the court has previously indicated to the parties, Judge Shanahan's opinion did not include a fully developed record. The finding by Judge Shanahan simply allowed the parties to proceed to develop the record on those theories that remained in the case. Consequently, the plaintiffs' heavy reliance on Judge Shanahan's opinion is misplaced.

3. The court finds no manifest errors of law or fact based on the arguments of plaintiffs.

4. The court is very concerned that now, for the first time, plaintiffs are arguing that fraud exists in this case. The plaintiffs did not plead, argue or otherwise present this claim

or any evidence in support of this claim to the court prior to this motion to reconsider. It is not appropriate to raise such a claim for the first time on a motion to reconsider.

5. Plaintiffs argue that under Neb. Rev. Stat. § 36-105 a party can pull together a series of writings as a contract when all of the terms and conditions have been agreed upon. That begs the question in this case. As set forth in the court's memorandum and order, material terms and conditions were still being discussed in the spring of 2003.

6. Plaintiffs point to a typographical error wherein the court indicates a statement regarding "done deal" had been made by Mr. Rehorn when it was in fact made by Tom Stephenson. The court finds this is a typographical error and has no impact on the decision by the court in this lawsuit. The court noted in its memorandum and order that this was a passing comment.

THEREFORE, IT IS ORDERED:

1. The plaintiffs' motion for reconsideration, Filing No. 426, is denied.
2. The plaintiffs' motion for a stay, Filing No. 428, is denied as moot.

DATED this 12th day of July, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
United States District Judge